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December 16, 1994

Kenneth A. Rubin, Esquire
Morgan, Lewis & Bockius
1800 M Street, N.W.
Washington, D.C. 20036

Re: Olin Corporation v. Fisons plc, et al.

Dear Ken:

This is a reply to your October 7 letter. I am sorry for the delay, but other aspects of this case and other matters were a priority. First, let me make clear that we are prepared to meet with you and your client to discuss resolution of this litigation on terms acceptable to both parties. There are, however, constraints on that willingness. We have met twice before and discussed your interim funding proposal; you have also reiterated that proposal in several letters, including one to the Court. As we have repeatedly explained to you, we do not believe that such an arrangement is fair or reasonable and we are not prepared to waste additional time on such proposals.

Moreover, the arbitrary allocation schemes you have proffered to date are not acceptable. For example, your *pro rata* argument about the number of entities involved which is used to justify a proposed 50% interim allocation between your client and mine is ludicrous. Under this flawed logic, if ABI had split into 99 smaller companies, our collective allocation would be close to 100 percent. You have provided no reasoned basis for any of the proposed interim allocation percentages -- even if we were inclined to accept such a proposal. We would be willing to consider, however, any reasonable proposal that finally settles the litigation.

Moreover, I reiterate that the interim funding arrangement is only to your client's advantage, since it provides payment of funds to Olin without any concomitant obligation or forbearance on Olin's part. It does nothing to resolve the litigation; it only funds the cleanup pending litigation and undermines incentives to proceed expeditiously toward trial. I have no basis upon which to conclude that Olin is unable to continue the remediation of the site *pendente lite*.

In addition, although you have persistently proclaimed that my clients are clearly liable for the contamination of the site, exhortation does not a judgment make. First off, in contrast to Olin, neither American Biltrite, Inc. ("ABI") nor The Biltrite Corporation ("TBC") had any direct role in operating the plant. As you know, ABR did hold title to the property from January 24, 1964 to February 17, 1964, merely to facilitate transfer of these assets to Whiffens/NPI-2. Thus, any connection ABI might have had to the site operations is as successor to the parent of the operating company at the site from 1958 through early 1964. TBC's connection to the site is even more remote since it is merely a split-off entity from ABI. Olin has not demonstrated that ABI and TBC are "responsible" for any of the contamination at the site, much less "most" of it. The NOR, which your client urged DEP to issue, and Olin's various claims regarding my clients' liability share the common defect of assuming that simply by fitting the definition of a potentially responsible party ("PRP"), my clients are "responsible" for a significant portion of the response costs associated with the site.

Your litigation claim is one for contribution. As such, it is clear that the Court must allocate response costs among PRPs using such equitable factors as it deems appropriate. Since I believe a court, looking at the factual and legal issues surrounding Olin's claims, will allocate little, if any, response costs to my clients, we are not persuaded by bald allegations of significant liability. Indeed, even a finding of potential liability in the abstract is unpersuasive and insufficient to justify a settlement since the heart of the case is the allocation of the total response costs. Unless we can arrive at a way to assess fairly these issues in order to expedite their resolution in advance of a court ruling, it appears fruitless for us to discuss compromise.

As you well know, there are significant legal and factual issues raised by Olin's claims that we believe will be decided in favor of our clients and absolve them of any significant liability. Some of the most significant facts and other considerations that lead us to conclude that Olin will be found responsible for most, if not all, of the response costs at the site include, among other factors, the following:

- That Olin was a sophisticated purchaser that purchased with full knowledge of the fact that the soil and groundwater at the site was contaminated by previous plant operations;

- That, although we believe all contaminants at the site are significant contributors to the required remediation, since Olin has focused on the chromium contamination, I note that prior to its purchase, Olin had actual or imputed knowledge that chromium along with highly acidic and other wastes had been managed at the site through approximately 1967;

- That the purchase and sale agreement between Olin and Stephan accounted for the contamination present at the site and allocated between purchaser and seller the costs of remediating that contamination;

- That Olin negotiated and signed an administrative order with the state before purchasing the site to evaluate the contamination at the site and to take any "necessary remedial measures" and, therefore, knowingly and voluntarily incurred any response costs associated with the cleanup of the site;

- That Olin continued to pollute the site and failed to take actions to mitigate existing pollution during its long tenure at the site;

- That no significant amount of chromium or other chemicals handled at the plant during the time period for which the Biltrite defendants are alleged to be responsible are traceable to the off-site plumes that are the primary focus of current remedial efforts since these plumes emanate from the area where the former acid pits were located;

- It is our understanding that until sometime in 1964, production and other waste waters were discharged to Lake Poly. Even if NPI-1 discharged chrome-containing wastes in Lake Poly prior to 1964, by virtue of the start-up nature of the facility's production of Kempore, the production level, and thus, the discharge levels, were significantly lower than later years. This is confirmed by the limited production records you have provided to us. Thus, less chromium and other chemicals were managed on the property during NPI-1's tenure;

- It is our understanding that the discharge to Lake Poly did not significantly contribute to the current chromium and other contaminant plumes for various reasons including the fact that the discharge was more dilute and the majority of the discharge flowed through and off-site as opposed to sinking into the ground, as was the case in later-constructed acid pits, and sampling data confirms this. The acid pits that are the source of chromium and other chemical contamination were established after 1964;

- That, regardless of who initially placed the chromium and other wastes in the acid pits, it was the acidic and other waste discharges of subsequent owners and operators and the failure to fix known leaking liners in the later-constructed lagoons as late as 1983, that continued to mobilize the chrome and caused it to migrate further off-site;

- That Olin's settlement with Stepan extinguishes or, at a minimum, dramatically reduces, any liability ABI and TBC may have otherwise had to Olin. Stepan, is the successor by merger to the liabilities of NPI-1 and NPI-2, and thus Olin (if it has settled with Stepan), is responsible for all previous contamination, including any chromium contamination, at the site;

- The remediation of the Wilmington site is a regulatory responsibility that Olin voluntarily undertook by operating the plant as a RCRA treatment storage and disposal facility;

- That, despite the tolling agreement, Olin's claims are, in whole or in part, barred by the applicable statute of limitations; and

- That Olin is the owner and operator of the site and, for that reason alone, bears primary responsibility for its remediation.

This is, of course, only for a partial list of reasons and there are more we will attempt to establish vigorously in discovery and at trial.

For the foregoing legal and factual reasons, in any equitable allocation of response costs, we believe Olin ultimately will bear the majority share of the costs, not the negligible amount Olin has claimed it is responsible for. In short, although Olin has acted as if it were a blameless third-party, this is not a common dump site where the issues of liability are a foregone conclusion and the case is merely one of who contributed what to the site. This case is rife with factual and legal issues that represent an uphill fight for your client. Under *these circumstances, I am hard-pressed to recommend to my clients that they assist Olin in* the remediation efforts to the degree demanded by Olin.

Moreover, it is not insignificant with respect to our clients' resolve in this litigation that Olin has demonstrated a distinct tendency to stonewall and hide pertinent, discoverable information, both in litigation and our discussions. I will not reiterate my assessment of the propriety of the withholding of documents critical to our defense in the litigation on the basis of a questionable claim of privilege, except to ask the question, what is Olin trying to hide? We are still awaiting copies of non-privileged documents requested almost one year ago. In addition, if, as you state in your October 7 letter, Olin possesses new data about the nature of the remedial action and its relation to the chrome disposal, we want to see it. How can Olin claim we have refused to examine anything when it has refused to provide us with all the information on the damages and remedy issues?

We have sought information concerning the nature and extent of contamination and the proposed and completed remedial actions, in connection with our discussions prior to

commencement of the litigation, during voluntary disclosure and formal discovery after commencement of the action. Aside from some superficial information volunteered in the pre-litigation settlement discussions, we have received little on these subjects that is meaningful. As you know, your client's obstinance has forced us to file a Motion to Compel on this issue. The recent Order by Magistrate Judge Karol has, of course, vindicated our position. Olin's refusal to produce the purported settlement with Stepan while demanding that we settle is another example of Olin's misguided view of the logic and strength of its position. We shall continue to resort to whatever means we find necessary to obtain relevant information, but our view is that the conduct of Olin is hardly conducive to productive discussions about the possible resolution of this matter.

In a related vein, your comments about the pace of the litigation also warrant response. While the proximate cause of some of the delay in the litigation was the court's cancellation of the Scheduling Conference, Olin has obstructed our attempts to learn more about the site at virtually every turn. We have had to battle to obtain everything since the initial sharing of documents -- which Olin then claimed was everything relevant to our liability. Olin could have facilitated discovery by producing initially all its documents relevant to the case (as we did). Instead it provided us with only a few boxes out of what would turn out to be close to 300. It has also refused to produce key documents relating to the purchase of the site, it has refused to produce settlement documents relevant to the existence and scope of our claims against Stepan and or defenses, it has refused to produce damages and remedial information critical to assessing total cleanup costs and even refused to provide a log of privileged documents. At bottom, each of these actions has been, or will be, determined to be inappropriate and will only have served to slow the pace and increase the cost of the litigation you commenced.

Your assertions that you have learned from further discussions with Olin's engineers involved in ongoing site work that the "majority" of the remedial work is "directly attributable" to the chromium contamination and that ABI and TBC have obstinately refused "to examine and remediate the chromium contamination and off-site chromium plume, which they created," also miss the mark. Even assuming that the major problem at the site is chromium contamination, that fact standing alone does not mean that my clients are responsible for it for reasons including many of those mentioned above. "Obstinate refusal" is hardly a fair characterization of my clients declination to contribute to Olin's funding in the face of no proof or offer of proof of responsibility or causation and, more to the point, the fact that Olin has not remediated the chrome plume and it has known about it for over 10 years.

I do want to make clear that we do not take this matter lightly, but have no interest in the superficial, "rough justice" proposals that have been discussed to date. We will treat substantive proposals, dealing with the true merits of the case, with seriousness.

There is no need for you to respond to this letter with a point-by-point refutation of any of the foregoing; you may assume that I know that you disagree. Despite our willingness to entertain serious discussions with respect to the pretrial resolution of this matter, given your client's handling of this matter to date, I fear that these issues will be determined in court with a judicial referee, not in an exchange of letters. However, if there are broad terms upon which earnest discussion of compromise may be based, I welcome your thoughts.

Very truly yours,

Roscoe Trimmier, Jr.

RT/clp